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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/796,305

02/07/97

KILIBWA

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CULTOR-10205

BAKER & MCKENZIE  
ONE PRUDENTIAL PLAZA  
100 EAST RANDOLPH DRIVE  
CHICAGO IL 60601

IM21/1110

EXAMINER

TRAN LIEN, T

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

11/10/98

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademark**

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# Office Action Summary

Application No.  
**08/796,305**

Applicant(s)  
**Kilibwa**

Examiner  
**Lien Tran**

Group Art Unit  
**1761**



☒ Responsive to communication(s) filed on April 30, 1998 and Aug. 18, 1998

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 30-63 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 30-39 and 43-63 is/are rejected.

☒ Claim(s) 40-42 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 10

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Claims 30-35,37-38,48-49,51-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelbrecht et al. in view of The Encyclopedia of Chemical Technology for the same reason set forth in paragraph 9 of the previous office action.

2. Claims 30,34-38,39,43-47, 48,50-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dartey et al. in view of Hay Jr. et al. and the textbook "The Encyclopedia of Chemical Technology for the same reason set forth in paragraph 10 of the previous office action for the additional comment below.

The teaching of Dartey et al. was described in paragraph 10 of the previous office action.

Dartey et al. disclose the dough contains 1.5-10% cellulosic bulking agent which includes materials such as microcrystalline cellulosic materials and carboxymethyl cellulose. The are considered fiber material; thus, the baked product disclosed by Dartey et al. do contain fiber. The amounts of polydextrose to fiber are similar to the claimed range.

3. Claims 40-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The claims are indicated to be allowable because there is no suggestion in Dartey et al. to make a bread product and to add polydextrose in amount of about 2 to about 3%.

4. The changes in the rejection are necessitated by amendment; the same references are still applied.

5. In the response filed April 30, 1998, applicant argues the amount of polydextrose in the Dartey et al. process is not the same as claimed and the use of 1-5% polydextrose as claimed

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cannot be characterized as the result of routine experimentation. This argument is not persuasive because whether or not the claimed amount is the result of routine experimentation is not an issue because the end point of the Dartey et al. range meets the end of the claimed range. Thus, the reference still meets the limitation of the claims. While Dartey et al. teach the amount can be greater than 5%, they also teach the amount to be 5% which is the amount claimed.

6. In the response filed Aug. 18, 1998, applicant argues there is not teaching or suggestion in the Engelbrecht et al. reference to use both polydextrose and glycerol monostearate and the Encyclopedia of Chemical Technology does not mention the use of glycerol monostearate. This argument is not persuasive. The textbook teaches that is common to add surfactant(emulsifier ) to yeast-raise dough product such as bread to function as crumb softener or dough strengtheners; therefore, it would have been obvious to one skilled in the art to add an emulsifier in the Engelbrecht et al. product for its art recognized function. The textbook does not mention glycerol monostearate; however, glycerol monostearate is a very well known emulsifier and the disclosure of monoglycerides encompasses the use of glycerol monostearate. The selection of a particular emulsifier would have been an obvious matter of choice. The argument about the lack of teaching in Engelbrech et al. of combining polydextrose and fiber will not be addressed because the claims directed to the fiber were not rejected under Engelbrech et al. previously and are not rejected under Engelbrech et al. now.

7. Applicant's arguments filed April 30, 1998 and Aug. 18, 1998 have been fully considered but they are not persuasive.

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8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

November 6, 1998

  
**LIEN TRAN**  
**PRIMARY EXAMINER**